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REMARKS

Claims 1-3 and 6-7 are currently pending in the above application.

Claims 1-3, 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Englander (U.S. Patent No. 6,636,822) in view of either Foster (U.S. Patent No. 2,877,686) or Bateman (U.S. Patent No. 3,610,736). Applicant respectfully traverses the Examiner's rejection.

Englander discloses a method and system for facilitating the certification process (i.e. the regulatory compliance) for school bus mirrors, including crossover mirrors, using artificial visualization. That method allegedly qualifies and certifies the field of view coverage of mirror systems for compliance with predetermined criteria. One step in the method involves adding a definition and location of a prototype mirror, including data that defines the shape of the prototype mirror. In conjunction with describing the method, Englander does show what appears to be a crossview mirror assembly that includes an arcuate mirror and a mirror support structure. As the Examiner acknowledges, the mirror shown in Englander in Figures 2 and 3 does not include an electronic actuator coupled to the arcuate mirror, nor does Englander disclose an electronic controller coupled to the electronic actuator and contained within the cab region, wherein the electronic controller controls the actuation of said electronic actuator to move said arcuate mirror clockwise or counterclockwise along a horizontal plane about said center point. The electronic actuator and electronic controller are both elements of claims 1-3, and 6-7.

The Examiner proposes modifying the mirror disclosed in Englander with the electronic controller assembly found in either Foster or Bateman to arrive at the present invention disclosed in claim 1. Applicants respectfully disagree with this determination for reasons described below.

Section 2143 of the Manual of Patent Examining Procedure states that three basic criteria must be met for establishing a *prima facie* case of obviousness, stating:

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"First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach all of the claim limitations."

"If the Examiner does not establish a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." Section 2142 MPEP, ch. 2100, p. 110. "When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned."¹ One cannot use hindsight reconstruction, picking and choosing among isolated disclosures in the prior art, to deny that the claimed invention is unobvious.²

Here, the Examiner has not established a *prima facie* case of obviousness because there is no motivation or suggestion in Englander to combine the teachings of Englander with either those of Foster or Bateman as the Examiner proposes. Englander is not concerned about the particular configuration of the mirror, the mirror support structure, and/or whether the mirror is electronically adjustable from inside the cab of the school bus. Englander is merely concerned with testing whatever type mirror assembly is provided, via artificial visualization, to ensure regulatory compliance with a predetermination certification standard. It matters not to the invention of Englander whether the mirror is a crossview mirror, a rearview mirror, a side mirror, or an electronically-controlled version of any of these mirrors, it only matters that whatever configuration of mirror is being tested according to the method of Englander to see if it meets a particular predetermined mirror mounting and visual orientation standard. Therefore, there is no motivation to modify Englander to include an electronic actuator and electronic controller system, contrary to the Examiner's position, because it serves no useful purpose in certifying regulatory compliance. For this reason alone, the rejection is improper and must be overturned. Reconsideration of claims 1-3 and 6-7 is thus respectfully requested.

1 *In re Ochiai*, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), *citing In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

2 *In re Fine*, 837 F.2d at 1075.

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The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 223-9500 if any unresolved matters remain.

Respectfully submitted,

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Dated: January 30, 2006